

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HOLLI NICEWANDER,)
Plaintiff,)
v.)
AMERICAN MORTGAGE NETWORK,)
et al.,)
Defendants.)

Civil No. 10cv2141-L(WMC)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE A
FIRST AMENDED COMPLAINT
AND DENYING AS MOOT
DEFENDANTS' MOTION TO
DISMISS AND EXPUNGE LIS
PENDENS**

On October 21, 2010 Defendants Onewest Bank, F.S.B., Federal Loan Mortgage Corporation and Mortgage Electronic Registration Systems, Inc. (“Moving Defendants”) filed a motion to dismiss complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and expunge lis pendens. Plaintiff did not file an opposition. Instead, on December 14, 2010 Plaintiff filed an amended complaint. The amended complaint was stricken because it was untimely under Rule 15(a), and therefore required leave of court. On January 3, 2011 Plaintiff filed a motion for leave to amend. On January 19, 2011 the Moving Defendants filed a notice stating that they do not oppose Plaintiff’s motion. Because the Moving Defendants do not oppose Plaintiff’s motion, Plaintiff’s motion for leave to file a first amended complaint is **GRANTED**. *See Fed. R. Civ. Proc. 15(a)(2).*

An amended complaint supersedes a prior complaint as a pleading. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997). A district court may treat as moot a pending motion

1 to dismiss a superseded pleading. *See* William W. Schwarzer *et al.*, Fed. Civ. Proc. Before Trial
2 ¶ 9:262 (2010). Accordingly, the Moving Defendants' motion to dismiss is **DENIED**
3 **WITHOUT PREJUDICE** as moot.

4 Based on the foregoing, it is hereby **ORDERED** as follows:

5 1. Plaintiff's Motion for Leave to File a First Amended Complaint is **GRANTED**. No
6 later than **February 7, 2011** Plaintiff shall file and serve the first amended complaint. In the
7 first amended complaint, Plaintiff shall address the issues raised in the Moving Defendants'
8 motion to dismiss.

9 2. The pending motion to dismiss and expunge lis pendens is **DENIED WITHOUT**
10 **PREJUDICE** as moot.

11 3. The Moving Defendants shall file a response to the amended complaint within the time
12 provided in Rule 15(a)(3). If Plaintiff fails to timely file the amended complaint, the Moving
13 Defendants may renew their motion to dismiss and expunge lis pendens by filing and serving it
14 no later than February 21, 2011.

15 4. The hearing date on Plaintiff's motion set on this court's calendar for February 7, 2011
16 is hereby **VACATED**.

17 **IT IS SO ORDERED.**

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19 DATED: January 24, 2011

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M. James Lorenz
United States District Court Judge

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